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Judiciary Committee  
February 17, 2010

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[LB699 LB801 LB907 LB996 LB1029 LB1085]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 17, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB907, LB1029, LB1085, LB801, LB699, and LB996. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None.

SENATOR MCGILL: (Microphone malfunction)...turned off. When you come up to speak, there is a light system in this committee that we enforce. You'll have five minutes and at minute four, the orange light will go on warning you that you only have another minute left to speak. And then we do ask that you try to wrap it up, otherwise I'll have to interrupt you and encourage you to...kindly encourage you to finish. You know, we'll go...for those who may not have been here before, you know, we'll open on the bill, we'll then take proponents, opponents, and neutral. There are forms that we'll need for you to fill out that are found at that desk to keep a record of who you are. And when you come up to testify, if you'd open by saying your name and spelling it, we'd appreciate that so we can also have good record of you in the audio form. And with that, we'll go ahead and get started. Actually, I need to introduce my committee members that are here. We have Senator Kent Rogert from Tekamah here on the right; Senator Brenda Council from Omaha on my left; Stacey Trout who is legal counsel; Christina Case who is the committee clerk; and Senator Colby Coash from here in Lincoln. And with that, Senator Nantkes will open with LB907. [LB907]

SENATOR COASH: Excuse me, Senator. [LB907]

SENATOR MCGILL: Yes. [LB907]

SENATOR COASH: Senator Conrad. [LB907]

SENATOR MCGILL: Conrad. I am sorry. (Laughter) [LB907]

SENATOR CONRAD: No worries. Danielle, it's fine regardless. And I've got some copies for the page to bring around here. (Exhibits 1 and 2) Good afternoon. [LB907]

SENATOR MCGILL: At least I didn't call you Senator Coash or something totally off. [LB907]

SENATOR CONRAD: That's true, that's true or Senator Lautenbaugh which would have been very embarrassing. (Laughter) [LB907]

SENATOR MCGILL: The Lautenbaugh/Lathrop thing always gets confused. [LB907]

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SENATOR CONRAD: Great. Yeah, one of each, please. Thank you. Good afternoon, members of the committee, Vice-Vice Chair McGill. My name is Danielle Conrad, that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I represent, as you know, the "Fighting 46th Legislative District" here in our Nebraska Unicameral Legislature. I'm here today to proudly, proudly introduce LB907. This bill was inspired by an elderly client from Lincoln who had sought legal representation from the University of Nebraska-Lincoln Civil Law Clinic within the context of bankruptcy proceedings due to medical debt and expenses incurred while raising her family. Currently, senior citizens who are not the head of family--I say that because it is a legal term of art--as defined in Nebraska Revised Statutes 40-115 cannot protect the home equity within the homestead exemption in bankruptcy proceedings. Existing protections are intended to protect these very citizens and the equity interest in their family home. The unforeseen consequences inflicted by the law as written prevents some unmarried seniors who encounter unforeseen debt to surrender this otherwise protected equity and be forced from their home. The public policy objectives of this bill mirror those widely accepted principles underlying the property tax exemptions found in Nebraska Revised Statute 77-3501 to 3530. Those statutes specifically allow low-income claimants who are aged 65 or over to receive a homestead exemption from property tax. The percentage of tax relief a person receives depends upon his or her household income. The availability of the property tax homestead exemption does not depend upon whether a person is married or single or head of family but rather the level of household income. LB907 is consistent with our other recent bankruptcy exemption bills that have passed through our Nebraska Legislature. And I would note for the committee, this legislation does not have an anticipated fiscal impact. On a technical note, these issues will affect...the amendments would only affect creditors who are either unsecured or do not have consensual liens on the homestead. If creditors rely on the existence of the homestead and if they get a consensual lien from the owner due to that reliance, this legislation won't affect them. In fact, that is true under the statutes as they are now written provided the debtor is head of family. Those holding judicial liens as opposed to consensual liens because they as unsecured creditors obtained a judgment in the district court in the county where the property is located, see Nebraska Revised Statute 25-1504, will be affected but only if the client files a bankruptcy. Judicial liens that impair exemptions to which the client would otherwise be entitled are avoidable in bankruptcy. If the client does not file for a bankruptcy, the judicial lien is unaffected. Finally on a personal note, I want to let you know besides the very strong support that I have for the underlying substantive legislation, another reason that I was so excited and enthusiastic to bring this bill forward is because it was brought to me by two third-year law students at the University of Nebraska College of Law. As many of you know, that is where I attended school and I speak very frequently about my experiences there. And the two young people, who you'll hear from in a moment, soon to be members of our bar association here in Nebraska hopefully, I think you will find them impressive, professional, compassionate, and the exact kind of young lawyers that we would hope for in this state. So besides the

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substantive nature of the bill, the personal interaction I have had with these outstanding law students has been a continual source of really pleasure in working on this, so. With that, I'm going to stick around and reserve the right to close just in case any questions come up in anticipation. But I thank you for your time and your kind consideration.  
[LB907]

SENATOR MCGILL: Thank you, Senator Conrad. Any questions? Nope. Thank you very much. [LB907]

SENATOR CONRAD: Okay. [LB907]

SENATOR MCGILL: And we'll take the first proponent. [LB907]

DAVID ARNOLD: (Exhibit 3) I don't know if I can quite live up to that introduction but I'll try. My name is David Arnold, D-a-v-i-d A-r-n-o-l-d. I'm currently a third-year law student at the University of Nebraska College of Law. Last semester, my associate George Lyford and I had the opportunity to take part in the University of Nebraska Civil Law Clinic. As Danielle mentioned, the Civil Law Clinic allows third-year law students to provide free legal services to low-income Nebraskans under faculty supervision. Through our research for an 80-year-old woman contemplating bankruptcy, we discovered that the Nebraska exemptions statutes would not allow her to protect her own home equity. After reflecting with our faculty supervisor, we determined that the current exemption statutes unfairly affect senior citizens in Nebraska. As a result, Mr. Lyford and I consulted Senator Conrad, which ultimately led to LB907. Currently, only a head of a family can use the Nebraska exemption statutes to protect the first \$60,000 of their home equity from an unsecured creditor. Head of a family is defined in Nebraska Revised Statute 40-115. The head of the family definition is very broad; it not only covers households with minor children but also those that include an aging relative or unmarried sibling. Once an individual qualifies as head of a family under Nebraska Revised Statute 40-115, that status remains indefinitely as long as the individual stays in the residence. The problem with the current exemption statutes is that the head of a family status, although indefinite, is property specific. What this means is that if an individual that has already acquired the head of a family status moves to another residence without dependents, the \$60,000 home equity exemption will not apply to the new home. The way the exemption statutes are currently written, a widow that chooses to downgrade houses after she loses her loved one would currently not be protected and wouldn't have access to that \$60,000 exemption. This would be the case regardless of whether or not she previously qualified as head of a family at her previous residence. LB907 would remedy this wrong by amending the statute to grant the \$60,000 exemption to either (a) a head of a family, as currently defined, or (b) a person who is 65 years or older whether or not they are head of a family. It's a simple amendment that would help countless Nebraskans. Lastly, I'd like to just touch on the legislative history of the most current, I guess, adjustment of the exemption. Two years ago, the

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exemption was raised from \$12,500 to \$60,000. After reading the legislative history, it became apparent that the main purpose for this change was to cover more people and keep them in their homes. It's more cost-efficient to do so and it had been deemed at the time to be the best public policy. It was also expressly noted at this time that this public policy for keeping people in their home applied even more so to seniors. And I think what is most telling about this legislative history is that the head of a family limitation was never mentioned. I think that if at that time it had been brought up, it would have been included in those changes, but I think that the way the proponents look at LB907 is that this is the closing of a loophole instead of some great expansion. So with that, I humbly ask for your support and thank you for having me testify. [LB907]

SENATOR MCGILL: Are there any questions from the committee? None. Thank you, David, for your hard work. [LB907]

DAVID ARNOLD: All right. Thank you. [LB907]

SENATOR MCGILL: Next proponent. [LB907]

MARK INTERMILL: (Exhibit 4) Good afternoon, Senator McGill and members of the committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today representing AARP. We support this bill. We think it's a good idea. We are seeing an increased need to utilize bankruptcy on the part of our members. The only age group that has actually seen an increase in filing for bankruptcies from 2001 to 2007 are people that are just below the 65-year-old threshold, but we're also seeing a large increase in the proportion of the people who file for bankruptcy in the 65-plus age group. We think the public policy goal is important here of helping people stay in their homes and be able to protect that asset and be able to provide shelter for themselves. This does provide a modest amount of support to do that, and the Legislature did increase that as was noted from \$12,500 to \$60,000, but I would also point out that the average property value of a person who filed a homestead exemption was over \$60,000, about \$68,646 and there are three counties that that amount was over \$100,000. So while this does provide some additional protection for people filing bankruptcy, it is a modest amount and we think it deserves your support. [LB907]

SENATOR MCGILL: All right. Thanks. Committee questions? No. Thank you, Mark. I just want to note that Senator Lautenbaugh has graced us with his presence. (Laughter) And we'll take the next proponent. [LB907]

KEVIN RUSER: Thank you, members of the committee. My name is Kevin Ruser, K-e-v-i-n R-u-s-e-r. I'm on the faculty at the College of Law. I had the pleasure to work with Mr. Lyford and Mr. Arnold last semester when this issue came up in one of the cases that they were working on in the Civil Clinic, and was sort of the one that encouraged them to bring this forward to the Legislature to see if there could be a

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solution. I'm here in support of LB907. I represented low-income clients my entire career, which is hard to believe now, about 30 years, and I think that this bill will rectify a shortcoming in the statutes that we currently have in terms of the homestead exemption. I won't go over what prompted the legislation. I think that Senator Conrad and others have done a good job of doing that. What I will tell you is that I'm seeing in my practice at the law college a need for this kind of legislation because there are a number of elderly clients who are what I'll call downsizing. They grew up in a home. They raised their family in a home, and now they've sold it to move closer to family or because they have medical issues or whatever. And as Mr. Arnold stated, when they do that, then that homestead exemption does not port to that new home. So in the case of the clients that Mr. Arnold and Mr. Lyford worked with, the woman stood to lose about \$22,000 in equity because she had to move to a new home that she was not the head of a family. It's good policy to allow this. It's targeted towards seniors. Those are the people, in my experience, who have acquired the most equity in their homes. Mr. Intermill makes a really good point about the fact that even the \$60,000 limit may not be enough, but it's better than nothing. And so I think the policy is sound and I urge the committee to advance the bill. And as Senator Conrad pointed out, there are analogs in other statutes. In the tax statutes, for example, people are able to claim that exemption, tax exemption, whether or not they are head of a family. Finally, it's my understanding that there is little or no opposition to the bill. I think that signifies that everyone believes that it's a good idea, so I would ask the committee's support. [LB907]

SENATOR MCGILL: Thank you. Any questions from the committee? [LB907]

SENATOR COUNCIL: Just a comment. [LB907]

SENATOR MCGILL: Yeah. [LB907]

SENATOR COUNCIL: Yes, thank you, and I meant to say this to Mr. Arnold as well. I'm going to commend you and the members of the litigation clinic. I'm sure you're very proud of the fact that your students recognized this issue and not only did they provide the legal representation to that particular client, they continued their advocacy in a manner to establish a policy that will prevent that from happening to others. And I just wanted to commend you. I know you must be...feel proud as the professor, for lack of a better...or the supervisor of the clinic and want to take this opportunity. I had the pleasure at Senator Conrad's invitation to meet with the young men who are the advocates for this particular piece of legislation, and I think we need just to acknowledge and recognize their foresight in this regard. [LB907]

KEVIN RUSER: I am proud of that and the Legislature can provide a happy ending to this story because if the bill passes, their client could still benefit from the legislation, so. [LB907]

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SENATOR COUNCIL: Thank you. [LB907]

KEVIN RUSER: Thank you. [LB907]

SENATOR MCGILL: Some good mentoring going on in that program. Senator Lautenbaugh. [LB907]

SENATOR LAUTENBAUGH: Thank you, Madam Chair. So, sir, you're with Nebraska Law School? [LB907]

KEVIN RUSER: Yes. [LB907]

SENATOR LAUTENBAUGH: How did it occur to you to actually know that you could come and testify before us to provide information? [LB907]

KEVIN RUSER: How did it occur to me? (Laughter) [LB907]

SENATOR LAUTENBAUGH: I guess I'm just asking because it didn't occur to you to write an article in The Nebraska Lawyer. You're actually just coming here and telling us what we should do, right? [LB907]

KEVIN RUSER: I just decided to show up. [LB907]

SENATOR LAUTENBAUGH: Next time you have a faculty meeting, you should share that with the entire faculty (laughter). They are remarkably approachable without a six-page dissertation. [LB907]

KEVIN RUSER: (Laughter) I'll keep that in mind. [LB907]

SENATOR MCGILL: Sorry, another situation flying out there. [LB907]

KEVIN RUSER: Okay. All right. [LB907]

SENATOR COUNCIL: You're just an innocent victim here. [LB907]

SENATOR MCGILL: Yes. Thank you very much. [LB907]

KEVIN RUSER: Thank you. [LB907]

SENATOR MCGILL: Sorry for people who are out of the loop on that. We have a lot of in jokes in the Judiciary Committee. Next proponent if there are any? Anyone else here in support? Anyone here in opposition? Anyone neutral? Okay. Seeing no other testifiers, Senator Conrad. [LB907]

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SENATOR CONRAD: Thank you, members, for your kind attention, careful consideration, and thoughtful questions in regards to this matter. Just two quick points in closing. At the introduction of this legislation, I had the page pass around two letters of support that I would like to be formally recorded in the record: One from Legal Aid of Nebraska and one from Family Housing Advisory Services. Just a quick highlight. I think the attorney from Legal Aid probably sums this up best. LB907 does not cost the state anything but gives a large number of seniors peace of mind. She has spoken directly with several seniors who would be affected by the law and without this legislation might be at risk of losing their home and/or forced into tax-subsidized housing. So I think that's a very succinct explanation of the issues that are at play in LB907 and want to recommend the committee review those letters as part of their deliberation. Two other quick points. One, Nebraska has a very, very low rate of filings in terms of bankruptcies as a whole. There was a recent media story that showed I think we were the second lowest state in terms of filings, so it's not as if there is widespread abuse in terms of the utilization of this important civil tool that is available to struggling families and LB907 would not exacerbate that. Finally, again, I want to commend Mr. Arnold, Mr. Lyford, and Professor Ruser for the hard work that they've done before we got here today, and that is not only in meeting with several members of this committee, but sitting down with potential opponents and talking through the hard issues, and doing the research, and doing the legwork. And that's how we got to this point today and were able to put together a very straightforward succinct hearing, and particular thanks go out to Bob Hallstrom and Jerry Stilmock from the Nebraska Bankers Association and Julia Plucker who represents some clients with an interest in the collection field as well. They've all really worked hard with us together to put forward a united front on this issue and I want to thank them for their time and attention. With that, thank you. [LB907]

SENATOR MCGILL: Thank you, Senator Conrad. And with that, we'll close the hearing on LB907 and open the hearing on LB1029. Is Senator Stuthman here? Is he? Okay. I'll just take a time-out then for a second. Oh, we have Senator Stuthman now. Wonderful. Were you running here? Well, you're welcome to start as soon as you catch your breath. [LB907]

SENATOR STUTHMAN: Okay. Thank you, Senator McGill. Vice Chair McGill. [LB1029]

SENATOR MCGILL: Vice-Vice Chair. (Laugh) [LB1029]

SENATOR STUTHMAN: Vice-Vice Chair McGill and members of the Judiciary Committee. My name is Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District, and I'm here today to introduce LB1029. LB1029 was brought to me by a county judge in my district. It would allow for the scheduling of nonjudicial days due to bad weather, emergencies, or holidays declared for full or partial days. This past year, President Obama declared the afternoon of December 24 as a federal

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holiday. Unfortunately, because of the state statutes that define a judicial day, state workers in the court system were not afforded that holiday. The definition of judicial days in the state statute also caused court workers to stay at work while courthouses across the state were closed due to weather emergencies this winter. And I truly hope that we don't have a winter like this again. I am willing to work on amendments to make this bill better if someone feels that there's some issues that we have not addressed or that I have not addressed in this. And I'm very agreeable to work on this bill if there is a need for that. There are people here today that can answer any technical questions that you may have. But I want to tell you what the policies, what we have right now as far as who decides in a county when a courthouse is closed. In Platte County, they have a motion in record that the committee that comprises the duty of closing the courthouse is the county board chairman, building and grounds chairman, highway superintendent, sheriff, and county clerk, and they make a unanimous decision to close the courthouse if inclement weather. In Colfax County, what it is, is the emergency manager and the sheriff make a recommendation to one of the commissioners or to the commissioners, and then one of the commissioners makes a decision as to whether to close the courthouse or not. My experience in Platte County is the fact that, most generally, it's the sheriff, the highway superintendent, when they feel that the roads are really bad, they get ahold of the clerk and the board chairman, and hopefully come up with a decision so that it makes it safe for everyone to either get home or not to make an attempt to get there. So with that, I would try to answer any questions if you have any. [LB1029]

SENATOR ASHFORD: Any questions of Senator Stuthman? It seems pretty clear apparently, Senator. [LB1029]

SENATOR STUTHMAN: I try to make them that way. [LB1029]

SENATOR ASHFORD: Right to the point. Thank you. [LB1029]

SENATOR STUTHMAN: I will stay for closing. [LB1029]

SENATOR ASHFORD: Thank you. Proponents? [LB1029]

WILLIAM MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today in support of LB1029 on behalf of the Nebraska State Bar Association. As Senator Stuthman has described, this bill did come to the senator from a county judge in Platte County. And when the Bar Association looked at this, it made sense to include a statute like this. And the situation that we are concerned about is if you would have some kind of a legal document due tomorrow and we get a blizzard in Platte County, what do you do? And if that court is closed, does that day count against you? Should you have to drive to Columbus and see if the court is open? Should you have to find the telephone number that I'm told is to be left for

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someone who you can call to file something? It just makes sense to us that if the courthouse is closed and the presiding judge closes the court, that would now be deemed a nonjudicial day and you would have until the next judicial day to file your response. And as the committee knows, close is not close enough when it comes to filing a document that is due today. It must be filed today if it is a judicial day. And we think that this makes sense and we will work with Senator Stuthman to tighten up the language with some very minor changes. Be happy to answer questions the committee may have. [LB1029]

SENATOR ASHFORD: Senator Lautenbaugh. [LB1029]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today, Mr. Mueller. Don't you think people should be using e-filing now anyway? [LB1029]

WILLIAM MUELLER: For those courts where it's available, certainly, and in the future that will change all of this. I don't think that we're there yet. [LB1029]

SENATOR LAUTENBAUGH: Okay. And I applaud you for bringing this. I just met with the technology committee yesterday and they want us all to start using e-filing, so I thought I would insert this commercial that neither rain nor snow will keep an e-filer from his appointed rounds, but. [LB1029]

WILLIAM MUELLER: Well, and others have raised the same question that you have and I do think down the line this will not be a problem. But, right now, I think potentially it is a problem... [LB1029]

SENATOR LAUTENBAUGH: Thank you. [LB1029]

WILLIAM MUELLER: ...or it could be a problem. [LB1029]

SENATOR ASHFORD: I'm surprised this hadn't been done before actually. It's amazing. [LB1029]

SENATOR ROBERT: Yeah. [LB1029]

SENATOR MCGILL: Yeah. [LB1029]

SENATOR ROBERT: That's my question: 130 years in the court and this has never come up? [LB1029]

SENATOR ASHFORD: It's amazing. There has to be a case on this somewhere, I mean, doesn't it? [LB1029]

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WILLIAM MUELLER: And I've not done research. I would assume that there is a case on this. [LB1029]

SENATOR ASHFORD: We have had inclement weather in the past. [LB1029]

WILLIAM MUELLER: We have. (Laughter) We have. It's been a while though. It's been a while. [LB1029]

SENATOR ASHFORD: Certainly. It's about 24 hours. [LB1029]

WILLIAM MUELLER: We've had some very nice...until this winter. It's been a while. [LB1029]

SENATOR ASHFORD: Okay. Thanks. Yeah, Senator Lautenbaugh. [LB1029]

SENATOR LAUTENBAUGH: Actually I thought of an actual follow-up, Mr. Chairman. Thank you. Would this also be made or could this be made to apply to register of deeds offices and whatnot, in some way also, because it's the same problem? [LB1029]

WILLIAM MUELLER: The same problem exists. [LB1029]

SENATOR LAUTENBAUGH: I know in Douglas County at one point they started closing the office to have catch-up days and you couldn't file anything on catch-up days. Well, as we all know, the deadlines don't wait for a catch-up day, so. [LB1029]

WILLIAM MUELLER: Yeah. I'm not as familiar with deadlines that would come into play in a register of deeds office. There certainly may be some of those deadlines. And one of the concerns that we always have is that courthouses need to be open and you don't know when someone is going to show up who needs to file something, and that's important. [LB1029]

SENATOR ASHFORD: Okay. Thanks, Bill. [LB1029]

WILLIAM MUELLER: Thank you. [LB1029]

SENATOR ASHFORD: Any other proponents? Opponents? Anybody for inclement weather? (Laughter) Neutral? Welcome back. [LB1029]

ELAINE MENZEL: Thank you. Chairman Ashford and members of the committee, my name is Elaine Menzel; it's M-e-n-z-e-l. I'm here on behalf of NACO. We are appearing here in a neutral capacity on LB1029. This bill will help address one of the potential factors that arise when inclement weather necessitates consideration of closing the county courthouse. Our association did not take an official position on the bill but we

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certainly recognize issues that counties face when considering whether or not to close the courthouse. For example, one of the snowstorms that occurred last year around Christmas required...or had the counties close the courthouse. However, they still had to make accommodations for the courts and court personnel in those courthouses. If there's any questions, I will attempt to answer them. And I'm sorry, Senator Lautenbaugh. I don't know your register of deeds question...or response... [LB1029]

SENATOR LAUTENBAUGH: I wasn't going to put you on the spot and ask you to speak for NACO, all of NACO, anyway, so. [LB1029]

SENATOR ASHFORD: Okay. Seeing none, thanks. [LB1029]

ELAINE MENZEL: Thank you. [LB1029]

SENATOR ASHFORD: Any other testifiers? Senator Stuthman. [LB1029]

SENATOR STUTHMAN: Thank you, Senator Ashford. In closing, I would just like to make a comment as far as, you know, you made the statement of has this ever been...occurred before. You know, maybe not. And I hope it never happens again, you know, that they will have to close the courthouse. But, you know, things can happen. It can...courthouses can be closed, but be... [LB1029]

SENATOR ASHFORD: Right. No, it's a very practical idea. [LB1029]

SENATOR STUTHMAN: And we have a method. And we also have a method, you know, in place in the counties. And I'm sure all counties have a procedure that they follow with the appropriate closings of a courthouse. So I think, you know, everything can be addressed that way. And if there is anybody or if the committee feels that we should address some portion of the bill, you know, I'm very willing to accept an amendment to improve it, but I think the bill is pretty straightforward already. So I just would ask that we could hopefully move this bill on and maybe, you know. This winter is a winter that is the worst winter I've seen since '49. [LB1029]

SENATOR ASHFORD: The year I was born. [LB1029]

SENATOR STUTHMAN: And I know a lot of you people have never seen... [LB1029]

SENATOR ROBERT: You're old. That's a long time ago. [LB1029]

SENATOR MCGILL: (Laugh) [LB1029]

SENATOR ASHFORD: Sorry. That was a bad winter, I remember. [LB1029]

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SENATOR STUTHMAN: (Laugh) Yeah, that was the winter they dropped the World-Herald out from an airplane to our farm. [LB1029]

SENATOR ASHFORD: That winter. I remember. (Laugh) [LB1029]

SENATOR MCGILL: They really did that? [LB1029]

SENATOR ASHFORD: Did they really? [LB1029]

SENATOR MCGILL: Did they? [LB1029]

SENATOR STUTHMAN: Oh, yes. Every week the Sunday World-Herald was dropped out by the airplane. Um-hum. That's how we got our mail. [LB1029]

SENATOR ASHFORD: To the various farms? Or how did they... [LB1029]

SENATOR STUTHMAN: Pardon? [LB1029]

SENATOR ASHFORD: To a central place? Or how did they...? [LB1029]

SENATOR STUTHMAN: No. Over your farm they dropped it down. [LB1029]

SENATOR ASHFORD: Wow. [LB1029]

SENATOR STUTHMAN: The first one we found, it was in the hog yard, so we found that one. But we looked... [LB1029]

SENATOR LAUTENBAUGH: That's not editorializing, is it? [LB1029]

SENATOR ASHFORD: This is why people...this is why we enjoy our Judiciary sessions because we learn things that we never...and that is certainly something I did not know. [LB1029]

SENATOR STUTHMAN: Yes. But I would ask that, you know, hopefully we could advance this because it is an important bill that I feel that would address the situation that can occur. So with that, I'd... [LB1029]

SENATOR ASHFORD: I think you're right. Thanks, Senator. [LB1029]

SENATOR STUTHMAN: You betcha. [LB1029]

SENATOR ASHFORD: Okay. Senator Lautenbaugh, LB1085. Garnishment issues. [LB1029]

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SENATOR LAUTENBAUGH: Thank you, Mr. Chairman, Madam Vice-Vice Chair, members of the committee. This is a very straightforward bill. I know I always say that and I think it's almost always true. The problem this is meant to deal with is garnishments where in existing law the notice is sent out to the judgment debtor within three days. This changes it to seven. The point of it is all too often the bank hasn't put a hold on the funds by the time the judgment debtor receives notice and they go and clean out the account. And your options are pursue the bank, which is a protracted thing. There's no provision for attorneys fees I don't believe. Or you're just out if you're trying to collect a valid and enforceable judgment. By giving seven days' notice instead of three, it gives the banks time to actually process and do what they're supposed to do so they're not exposed to liability. I'm told I have one witness on this and he or she is not here yet, so I could try to expand on this maybe? [LB1085]

SENATOR ASHFORD: Oh... [LB1029]

SENATOR MCGILL: Keep tap dancing. [LB1029]

SENATOR ASHFORD: Expanding. [LB1029]

SENATOR MCGILL: Or you can tell the story. (Laugh) [LB1085]

SENATOR COUNCIL: I read it again last night, Senator Lautenbaugh, just, you know, I had to have some yuks last night. [LB1085]

SENATOR ASHFORD: What story was that? [LB1085]

SENATOR MCGILL: You missed out earlier. I think you were gone. [LB1029]

SENATOR ASHFORD: Oh. [LB1029]

SENATOR LAUTENBAUGH: I was just telling one of the professors from the law school, it's entirely permissible to come here and tell us what you think rather than write a six-page article in the The Nebraska Lawyer telling us how we screwed up last year, so. [LB1085]

SENATOR ASHFORD: Yes. Do we have an opinion from that law professor? Now on this bill, this seems...you know, I hate to... [LB1085]

SENATOR LAUTENBAUGH: But honestly, veering... [LB1029]

SENATOR ASHFORD: That's an influential journal. [LB1029]

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SENATOR LAUTENBAUGH: Yes. And veering back to my bill for a moment if I could, I did actually used to do this kind of work years ago so I am familiar with this problem. [LB1085]

SENATOR ASHFORD: As familiar as you were with the last one? [LB1085]

SENATOR LAUTENBAUGH: Yes, yes, oddly enough. A lot of times the banks would not process and put a hold on the account. The way it's supposed to work is the minute they receive that paperwork they're supposed to put a hold and any funds in the account are frozen until further order of the court. A lot of times the banks aren't local anymore especially. It has to be sent to the processing department in heaven knows where, and there's just a delay in getting that hold put in place. So this bill would address the situation I guess.. [LB1085]

SENATOR ASHFORD: Which situation is that? (Laugh) [LB1085]

SENATOR LAUTENBAUGH: It would be the situation...(laughter). [LB1085]

\_\_\_\_\_ : I'll go ahead take one for the team. [LB1085]

SENATOR COUNCIL: Oh, come on. (Inaudible.) [LB1085]

SENATOR LAUTENBAUGH: Okay. [LB1085]

SENATOR ASHFORD: Thank you, Senator Lautenbaugh. [LB1085]

SENATOR LAUTENBAUGH: Boy, I'd be happy to take any questions. [LB1085]

SENATOR COUNCIL: (Inaudible) question. [LB1085]

SENATOR ASHFORD: Senator Council has a question. [LB1085]

SENATOR COUNCIL: Senator Lautenbaugh, correct me if I'm wrong, but the issue is that there's a notice. And does the notice expire within a certain number of days and then the banks then feel like they... [LB1085]

SENATOR LAUTENBAUGH: Well, not so much that as when the debtor gets the notice the impulse is to go take all the funds out of the bank. There are certain requests that the debtor can make upon receipt of a notice. Certain deadlines start ticking and the same would be in the case of the bank. This wouldn't really change any of that. This would just say that, you know, the judgment creditor would send notice to the debtor within seven days rather than three. And... [LB1085]

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SENATOR COUNCIL: And so it gives them time to get to the bank before the debtor can. [LB1085]

SENATOR LAUTENBAUGH: Well, it gives the bank the time to process so the bank isn't held liable, basically, too. [LB1085]

SENATOR COUNCIL: Okay. All right, thank you. [LB1085]

SENATOR ASHFORD: Okay. It seems like we may have one witness here that's just slipped in. Proponents. Welcome back. [LB1085]

PAT HENG: Senator Ashford, thank you; Amanda. [LB1085]

SENATOR LAUTENBAUGH: Nice to see you. [LB1085]

PAT HENG: Yes. I hear your schedule has been rearranged today. [LB1085]

SENATOR ASHFORD: There are other committees that wouldn't take this that lightly, wasn't that right? Okay. [LB1085]

PAT HENG: My name is Pat Heng. I'm an attorney in Omaha; also the owner of the Credit Bureau of Hastings and here on behalf of the Nebraska Collectors Association. And I think I've heard Senator Lautenbaugh kind of explain some of the things. I think one of the other things that out in central Nebraska we're encountering is the backlog with the courts as we are getting garnishments that have been dated...you know, the courts get them done but they actually get to us four or five days later than as the date that shows up. I mean, you know, theory, it is...you know, it's just hard to comply, especially with the courts out...you know, some of the courts, Adams County, Hall County, Buffalo County that have tremendous backlogs right now just because of the amount of, especially, collection activity out in those areas. And so this kind of, I think, tidies it up. In my...it's been that way out there for six, seven years. I think this is more just a procedural thing to try to tighten it up a little bit also. I think with...you know, again, getting it out is...we get it out as fast as we can, but I think some of the timing of it. When the courts get it done before they're able to mail it to us, and, you know, in certain situations it's a couple days' mailing before we get it, and it's already past the date, really, in statute that we're supposed to get it out. So I think the time deadlines, whatever the number of years this is set up, I think, really in today's world, it doesn't make much sense. So procedurally, I think it's just kind of helps clear it up and we've got other...I mean, there's issues with regard to banks getting them and getting them done, and so forth. But that's one of the main issues I've seen. [LB1085]

SENATOR ASHFORD: So it's just a...nothing changing in the processing. It's the time. [LB1085]

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PAT HENG: No. The process remains... [LB1085]

SENATOR ASHFORD: The time is what you're changing. [LB1085]

PAT HENG: Yeah, I mean it really kind of puts, in a real world, than it's been. [LB1085]

SENATOR ASHFORD: Any questions? Seeing none, thank you. [LB1085]

PAT HENG: Thank you. [LB1085]

SENATOR ASHFORD: Do we have any other proponents? Opponents? Neutral? Senator Lautenbaugh, you're done. Thanks. Senator Fulton isn't here either. Is Senator McCoy here? My gracious. We don't want to lose our audience. [LB1085]

SENATOR LAUTENBAUGH: I can go close if you'd like if you think that would help. [LB1085]

SENATOR ASHFORD: That's okay. (Laughter) Thanks, but...okay. Tony. We're ready. [LB801]

SENATOR FULTON: Are you ready? [LB801]

SENATOR ASHFORD: We're ready. [LB801]

SENATOR FULTON: (Exhibit 5) Thank you, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I bring to you LB801. And I bring LB801 after...before this committee's consideration on behalf of Attorney General Jon Bruning. LB801 makes several amendments to the Uniform Deceptive Trade Practices Act intended to modernize our code and protect Nebraska consumers against pyramid schemes and the unwitting distribution of personal information through peer-to-peer file sharing programs, while ensuring the operation of legitimate Nebraska businesses. As it stands today, our statutes regarding what are commonly referred to as pyramid schemes provide neither prosecutors with adequate clarity nor legitimate businesses with adequate protection because the 40-year-old chain distributor language is ill defined. Section 1 of the bill more precisely defines pyramid promotional schemes to exist when one gives consideration for the right to receive a financial benefit derived from the recruitment of others to participate in the plan. Unlike pyramid promotional schemes, which constitute a deceptive trade practice under Section 2, legitimate direct sales businesses operate by participants, giving consideration for the right to receive a financial benefit based on a purchase of goods, services, or intangible property. LB801 provides additional protection for participants and legitimate direct sales businesses by prohibiting the purchase of an excessive amount of inventory termed "inventory loading"

and requiring businesses to repurchase marketable inventory at commercially reasonable terms from the seller if the business relationship ends. And this is termed "appropriate inventory repurchase program" in the bill. The language of LB801 relating to pyramid promotional schemes is based on model legislation of the Council of State Governments and similar bills have been passed into law in other states. Presently, the Uniform Deceptive Trade Practices Act also fails to address the deceit implicit in certain peer-to-peer Internet file sharing programs. LB801, similar to a bill that has passed in the U.S. House this year, requires that users be provided conspicuous notice that files shared through such programs will be made available to the public and require the user to opt in prior to the program being able to access the participant's computer. This addition to the UDTPA is necessary given the widespread lack of understanding among users that free downloads can carry a heavy privacy and financial cost amidst a growing number of bad actors. The amount of sensitive information that has unwittingly been disclosed is staggering and you'll hear that following. I believe the Recording Industry Association of America will be here to elaborate but I'd like to give one example of why this law is so necessary. In February of last year, a Dartmouth College professor published a paper reporting that over a two-week period he was able to search a peer-to-peer network and uncover tens of thousands of medical files containing names, addresses, and Social Security numbers for patients seeking treatment for conditions such as AIDS, cancer, and mental health problems. Incidentally, these covered file-sharing programs are also the most pervasive means of distributing child pornography. Current statute provides for injunctive relief and the discretionary award of attorneys fees for the prevailing party if the complaint was known to be groundless or the engagement in a deceptive trade practice was willful. Presently, no evidentiary standard is specified for a private right of action in statute. LB801, in its present form, would specify a preponderance of the evidence standard, allow for a private right of action for damages in addition to equitable relief, and provide for the mandatory award of costs and attorneys fees for the prevailing party. I would introduce...I would appreciate the committee's adoption of the amendment before you--which I need to hand out, thank you--I'd appreciate the committee's adoption of the amendment which is being disseminated now which is intended to ensure that no burdens on legitimate Nebraska businesses are created by LB801. The amendment would restore current statute regarding the award of costs and attorneys fees, provide for the order of any form of equitable relief but remove the award of actual damages, retain the current language regarding the four-year statute of limitations for actions brought under the UDTPA, and require that the submission of false or misleading material or omission of material information to a government entity to a government entity be done so knowingly in order to constitute a deceptive trade practice. A knowing submission of materially false documents to government entities is included as a deceptive trade practice within the bill in order to give the Attorney General an additional tool for combating predatory lending. The other tools for the Attorney General contained in LB801 include: being provided with notice of a private right of action brought under the UDTPA so as to provide parties with awareness of what consumers are experiencing

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and what companies are doing without necessarily intervening in the case; and then, lastly, the ability to issue cease and desist orders against any person engaging in a deceptive trade practice. The provisions of LB801 are designed to modernize the UDTPA so as to enable protection of Nebraska consumers against deceptive trade practices like pyramid promotional schemes and injury through peer-to-peer file sharing, while protecting legitimate Nebraska businesses. I respectfully urge the committee's advancement of the bill to General File, as well as the amendment, and I'll defer more specific questions to Leslie from the Attorney General's Office to follow, but I can try to answer any questions that you might have now. [LB801]

SENATOR ASHFORD: Any questions of Tony? Okay. Thank you. [LB801]

LESLIE LEVY: Good afternoon, Chairman Ashford, members of the committee. My name is Leslie Levy, L-e-v-y. I'm an assistant Attorney General with the Department of Justice and I'm also the chief of the consumer protection and antitrust division. Our office would like to thank Senator Fulton for sponsoring LB801. I will not reiterate any of his testimony. He did a terrific job explaining the provisions of the bill. We would like to let you know that and reiterate that we do support the proposed amendments. We think this is a terrific consumer protection bill. We're excited that it's been introduced and we support it completely. So if there are any questions I would be happy to answer them. [LB801]

SENATOR ASHFORD: Any questions? Thank you. [LB801]

LESLIE LEVY: All right. Thank you, Senators. [LB801]

SENATOR ASHFORD: Next proponent. [LB801]

DEAN HEYL: (Exhibit 6) Mr. Chairman, members of the committee, my name is Dean Heyl, that's D-e-a-n H-e-y-l, and I'm an attorney and the director of government relations for the Direct Selling Association, and with me today are representatives from Amway, Reliv, and Southwestern. My association represents more than 200 direct selling companies and we would just like to speak or register our support of LB801. All of our member companies abide by the code of ethics that we have. They go through periodic reviews and they also go through random reviews. You have packets from our companies. I think there's about 11 of them and you also have a letter from myself, and I'd be glad to answer any questions that you may have. [LB801]

SENATOR ASHFORD: Any other questions or any questions? Seeing none, thanks. Next proponent. How many proponents do we have for this bill? Okay, okay. Come on up. [LB801]

BRYAN HARRISON: Just quickly to be on the record, sir. My name is Bryan Harrison,

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B-r-y-a-n, Harrison, H-a-r-r-i-s-o-n. I work for Amway out of Ada, Michigan. On behalf of thousands of Nebraska Amway distributors, we're here to support the bill as well. [LB801]

SENATOR ASHFORD: Did you come all the way down from Michigan? [LB801]

BRYAN HARRISON: From Michigan for the warmer weather, so. (Laughter) [LB801]

SENATOR ASHFORD: Are things doing any better up there? You guys getting...kicking the economy going a little better? [LB801]

BRIAN HARRISON: Not yet really. [LB801]

SENATOR ASHFORD: Pretty tough? [LB801]

BRYAN HARRISON: It is pretty tough. We have 15 percent unemployment at this point in the game, so it's rough. [LB801]

SENATOR ASHFORD: Well, I know. It is rough. [LB801]

BRYAN HARRISON: Yes.. [LB801]

SENATOR ASHFORD: Good luck. [LB801]

BRYAN HARRISON: Well, thank you, sir. [LB801]

SENATOR ASHFORD: Next proponent. [LB801]

BARRY MUROV: I'm Barry Murov, B-a-r-r-y M-u-r-o-v. I'm with Reliv International. We're a direct selling company. We have about 3,000 distributors in Nebraska, and I'm here in support of the bill. It's one of our top ten...Nebraska is one our top ten states, so it's an important state for us. I wanted to come and urge you to support the bill. [LB801]

SENATOR ASHFORD: Okay. Good. Thank you. Other proponents? [LB801]

STACIE RUMENAP: Let's get us in and out of here. My name is Stacie Rumenap, S-t-a-c-i-e, Rumenap, R-u-m-e-n-a-p. You can blame my parents for their spellings. I represent a group called Stop Child Predators, which is a national nonprofit organization that focuses on combating the sexual exploitation of children and we do that in the real world and we do that on-line, which of course brings me here today. One thing that we do is we partner with industry leaders, law enforcement, parents, community activists to look at legislation that's good for kids. In this case, we've been able to partner with the Recording Industry Association of America, who I don't believe could be here today. We

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have...we both support this bill. They obviously are concerned about peer-to-peer technology and the illegal sharing of music and videos. We are very concerned about the illegal sharing of child pornography and the proliferation of child pornography spread through peer-to-peer networks. So I have all sorts of statistics and studies I can share with you if you need that. But we want to go on record as supporting this bill. Thank you. [LB801]

SENATOR ASHFORD: Oh, this committee has done quite a bit of work in that area. Senator Lautenbaugh, in particular, led us in some significant legislation. So thank you. [LB801]

STACIE RUMENAP: Thank you. [LB801]

SENATOR ASHFORD: Next proponent. Did you raise your hand? No, I'm just kidding, Sally. (Laughter) Go ahead. [LB801]

MATT BENSON: (Inaudible) thank you. Matt Benson, M-a-t-t B-e-n-s-o-n. I'm here representing the Southwestern Company for LB801. I am a salesperson with Southwestern. I am a student at UNL. And basically, Southwestern is an internship for college students around the world, and basically trains students how to run their own business, teaching success principles, and through direct sales, I guess. And I'm here supporting LB801. [LB801]

SENATOR ASHFORD: Okay. Thanks. Thank you for coming. Okay. [LB801]

JIM OTTO: Mr. Chairman and members of the committee, my name is Jim Otto, last name O-t-t-o. I'm a registered lobbyist and president of the Nebraska Retail Federation. I'm here to testify in support of LB801. The Nebraska Retail Federation wants to go on record in support of it. Several Amway, Mary Kay are all members of the Nebraska Retail Federation and we think it's important to identify the distinct differences between direct sales organizations like that and pyramid schemes. And I just want to share one real quick story that I have a very personal tie to this, too, because my daughter had her master's degree and was a high school counselor. She and her husband decided to start a family. She said, Dad, I'm going to start this thing called Tastefully Simple out of my house. I said, sure, honey, that's nice, thinking nothing would come of it, but she wanted to stay at home with the kids and now we have a grandson, 4--a little over 4--a granddaughter, 1, and she is staying at home working very hard at the business. It's not easy but she works very hard, but this year will earn in excess of \$30,000. So these things are legitimate and are very good opportunities for a very many people and... [LB801]

SENATOR ASHFORD: Where do you draw the line, Jim? What's the difference between...and the purpose of the bill, obviously, is to draw that line. But where is the...in

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your mind, where... [LB801]

JIM OTTO: Well, there has to be a legitimate product. Many pyramid schemes don't really have a legitimate product. There has to be a legitimate way to return the product so that you can get most of your investment back if you didn't sell the product. They are actually outlined in the bill. But if you look at pyramid schemes, they really don't have...they're all based on recruitment and, kind of like a chain letter, and there really isn't anything and there really is nothing to sell. So the bill differentiates between... [LB801]

SENATOR ASHFORD: But they're out there and they're out there on the Internet and... [LB801]

JIM OTTO: Correct. [LB801]

SENATOR ASHFORD: Okay. Any questions of Jim? Thank you. [LB801]

JIM OTTO: Thank you. [LB801]

SENATOR ASHFORD: (Also see Exhibit 21) Any other proponents? Opponents? Neutral? Thank you. Senator Fulton waives. Okay, thank you. Senator McCoy, LB699. [LB801 LB699]

SENATOR McCOY: Thank you, Chairman Ashford and members of the committee. My name is Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District. I'm here this afternoon to introduce LB699 to you which would require Nebraska law enforcement agencies to forward a person's identifying information when they are arrested for a felony or a Class W misdemeanor and the peace officer or agency cannot determine their status as a legal resident or citizen of the United States, or the agency has reasonable cause to believe their documentation is fraudulent. This identifying information is to be sent to the Bureau of United States Citizenship and Immigration Services of the United States Department of Homeland Security. LB699 guarantees consistency between law enforcement agencies across our state, avoiding a patchwork of policies and procedures. It clarifies when identifying information is required to be sent to federal immigration authorities and ensures those who are arrested for a felony or a Class W misdemeanor receive equal treatment under the law. Let me share with you what LB699 is not. LB699 does not require or ask law enforcement to search for or detain people they suspect are in this country illegally, and LB699 is not a way to camouflage profiling of a specific nationality. Will LB699 solve all the problems on the federal level involving the investigation and prosecution of undocumented persons in Nebraska? No. But as a state, we need to make sure that we are doing all that we can on this issue, and forwarding identifying information to the federal level on a consistent basis speaks to that goal. Again, for a person to be affected by LB699, a peace officer

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or a law enforcement agency would need to be unable to determine if a person arrested for a felony or a Class W misdemeanor is in the United States illegally or have reason to believe their documentation is fraudulent. I thank you for your time and I'd be happy to answer any questions if there are any. [LB699]

SENATOR ASHFORD: Thanks, Beau. Any questions of Beau? Seeing none, thank you. Any proponents? Any opponents? Okay. Let's see. Omaha Police division is over here on the right. They're on the right and then you guys can...he may have to go back and catch bad guys. [LB699]

DAVID BAKER: Hopefully not. [LB699]

\_\_\_\_\_: Let him go (inaudible). [LB699]

DAVID BAKER: My name is David Baker, D-a-v-i-d B-a-k-e-r. I'm deputy chief of the Omaha Police Department. Senator Ashford and the committee, it's a pleasure to speak with you today. The Omaha Police Department understands the intent behind LB699 and empathizes with this intent. However, we feel that it could be problematic to implement and impractical in its actual implementation. We would disagree to some extent with the remarks of the senator. We do feel that this could have a negative effect on people similar to racial profiling that causes us...that might cause Nebraska law enforcement agencies to treat people of color and people with foreign national origins differently than they would treat persons and citizens of the United States. Most motorists...the reason why we feel it would be problematic is the bill would require law enforcement agencies to attempt to determine whether or not there was proof or adequate reason to believe that a person was a citizen of the United States or to determine their immigration status at off hours in the middle of the night, oftentimes when we have DUI arrests and things of this nature, and that simply is not an easy thing to do or anything that we normally have. Most of us today do not have on our persons anything to indicate the country of our birth, a passport, a birth certificate, or other type of documentation that could reasonably lead us to believe that we're in this country legally, that we're citizens of this country, or a visa to show that we're a resident of this country. That's the type of paperwork that is typically not required to be carried with us. Now driver's licenses also do not restrict themselves only to citizens of this country. They do not show citizenship status on our driver's license and you can be a permanent resident of this state and of this country and without necessarily having any kind of indication of that with you. Further, I would contend that if you have a name like mine, David Baker, or some common name here locally, there's no indication that I didn't come from Canada, that I don't come from some other area. I think this is going to be primarily directed and the police department fears that it may be primarily directed towards the Latino population of our state. We have talked with ICE agents in Nebraska. As of yesterday, they could not confirm to me that they've been contacted regarding this bill or their role in it, nor could they guarantee us that they have the resources

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necessary to accept the forwarding of these names. The Omaha Police Department feels that it's a high likelihood that if we can't determine a person's citizenship status on the street, that we'll be forced to go ahead and send over the information, the personal information for anybody arrested, such as this, to the federal government, and that kind of flow would be primarily of U.S. citizen data, but we would not be able to confirm that at the time that it was sent. And finally, just for clarification, our jails and our prison system does have a system by which they can make those type of confirmations with... [LB699]

SENATOR ASHFORD: Well, that was the question I was going to ask you. [LB699]

DAVID BAKER: ...with the Immigration and Naturalization Service. Yes, they can, but they can't make it off of a database or a simple way of finding it. It has to be a result of interview by ICE in conjunction with the cooperation of the person being interviewed and numerous other factors, and an investigation is then undertaken to determine the status. [LB699]

SENATOR ASHFORD: Okay. Thanks, Dave. Any...Senator Council. [LB699]

SENATOR COUNCIL: Thank you. Thank you, Deputy Chief Baker. Good to see you. [LB699]

DAVID BAKER: Good to see you. [LB699]

SENATOR COUNCIL: Long time. I had a couple of questions in that regard as well. Can you give us any feel for...and I appreciate the impetus for Senator McCoy's introduction of this and let's take the DUI situation. With regard to some fairly highly profiled and publicized cases in Omaha involving DUI, do you recall in those cases did those individuals have a Nebraska-issued driver's license? [LB699]

DAVID BAKER: I believe this last one did not. I believe they did have a suspended license though, indicating that they... [LB699]

SENATOR COUNCIL: So a driver's license had... [LB699]

DAVID BAKER: ...did have one at one time, just not during the last one, but I believe there was a particular incident unfortunately occurring last year in the area of 180th and Center that precipitated some of this, and certainly I think we're all aware of that. I think in that particular case the person was operating on a suspended license. [LB699]

SENATOR COUNCIL: Okay. So which meant that at some point in time they had a driver's license issued to them. [LB699]

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DAVID BAKER: I believe that to be the case. [LB699]

SENATOR COUNCIL: Okay. And I guess that's what gives, you know, cause to the concern. And despite, you know, the best intentions and the best efforts, if an individual has a driver's license issued by the state of Nebraska that does not appear to be fraudulent on its face or false, what information would an arresting officer have at their immediate disposal that gives them cause to believe that information needs to be sent to ICE? [LB699]

DAVID BAKER: We wouldn't have that information available to us so, as a result, we would be forced in order not to discriminate and not to discriminate against persons that have a different accent than we do or a foreign sounding name or a different color of skin...in order that we don't discriminate in that way, it is our opinion... [LB699]

SENATOR COUNCIL: You'd have to send everyone. [LB699]

DAVID BAKER: ...we would have to send everyone. Yes, ma'am. [LB699]

SENATOR COUNCIL: Okay. And that, like I say, intended or unintended, that's a consequence of what's being asked. And you also in your testimony referenced something that, at least in some correspondence that has been provided to me by other law enforcement agencies, how prompt is ICE to respond when you do provide them information? [LB699]

DAVID BAKER: That depends on the type of the case, if it's a high profile, if it's a felony, if there are a lot of individuals involved. Very early on in my career in the eighties I made an arrest that I was quite proud of with three individuals in a pickup truck that had been involved in some criminal activity and were illegally in our country. Made a call to what then was the INS and learned very quickly that they did not have the level of service or personnel that they needed to provide a service for such a small number. So, typically speaking, in cases where there's not a serious felony involved, they don't have the resources to investigate every one, ma'am. [LB699]

SENATOR COUNCIL: All right. Thank you. That's all I have. [LB699]

SENATOR ASHFORD: We have had ICE people here on different bills and my recollection is that it's a very...we have a very small number of... [LB699]

DAVID BAKER: Yes. And I would say that they've been very cooperative. They work very hard with us. However, I should indicate that having talked to them over this, they are not aware of the...they were not aware at the time that I talked to them about this bill nor were they aware of how they would facilitate their role in the bill or whether there would be resources available to investigate. As I stated here, I really do believe that in

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order to treat everybody equally, it's not that we can't guess, but law enforcement is not about guessing. And treating people fairly and equitably is not about guessing. We would have to treat everybody equally, send over that volume of information. Most of the information we would be flooding them with would be information on U.S. citizens. [LB699]

SENATOR ASHFORD: Okay. Thanks, Dave. Thank you. And no other questions? Thank you. [LB699]

DAVID BAKER: Thank you. [LB699]

SENATOR ASHFORD: Next opponent. [LB699]

NORMAN PFLANZ: (Exhibits 7, 8 and 9) Good afternoon, Mr. Chairman, members of the Judiciary Committee. My name is Norman Pflanz, N-o-r-m-a-n P-f-l-a-n-z. I'm a staff attorney with Nebraska Appleseed Center for Law in the Public Interest. We're a nonprofit, nonpartisan public interest law project and we're dedicated to equal justice and full opportunity for all Nebraskans, and I'm here today to testify in opposition to LB699. Our main concern is that this bill would further draw local law enforcement into the business of serving as immigration agents with serious consequences for public safety, as we just heard. Many police departments, police chiefs, major law enforcement associations, including the International Association of Police Chiefs and Major Cities Chiefs Association have opposed asking local police to serve as federal immigration agents. It's a dangerous approach for public safety and it's not the law and order policy that it might appear to be at first blush. The first level of concern is that it is dangerous for public safety. Whenever police are required to increase their involvement in immigration matters, it does not just add to their responsibilities. It fundamentally hinders their ability to fight crime and protect public safety. If community members know that local police are involved with immigration, many will no longer feel comfortable or safe coming forward to report crimes and assist with investigations. And since many families have mixed immigration status, many more people than simply those without legal status will fear speaking to the police. So adding immigration law to police responsibilities threatens to unravel community policing initiatives that have been central to declining crime rates over the past two decades, which ultimately jeopardizes the safety of everyone in the community. Another concern that was also brought up is that LB699 is triggered by arrests, not convictions, and could increase the incidences of racial profiling and other problems. It would require immigration checks on individuals arrested, not convicted of a crime, and thus creates the potential for these racial profiling problems. It would effectively empower local law enforcement to enforce immigration laws but without providing the necessary tools or guidance for doing so. Consequently, even well-intentioned officers may turn to crude proxies for immigration status which could result in discrimination against minorities and all immigrants, including citizens and legal residents, as well as individuals who are perceived to be

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foreign looking or foreign sounding. It will also deter victims of crime from reporting these crimes. Victims of domestic violence and trafficking, for instance, may fear approaching police to report these crimes. It's also a burden on local police resources. Immigration law is a highly technical area of the law, subject to change, and it's been compared to the tax code in its complexity. So asking local police to monitor immigration status as they fulfill their other duties is like asking them to stay abreast of tax law and figure individual's tax refunds while they enforce other laws. And on a practical level, this bill would require that all individuals in the state of Nebraska carry proof of their immigration status at all times in order to avoid having their identifying information forwarded to USCIS as we also heard earlier. So in conclusion, LB699 would hinder rather than enhance efforts to fight crime. Any individual who has committed a crime is already subject to punishment under the criminal justice system. So by requiring police to serve an additional immigration function, we may, in fact, undermine their ability to fulfill their primary responsibility which is to protect public safety and effectively investigate crimes. And I thank you for your time and I'd be more than happy to answer any questions. [LB699]

SENATOR ASHFORD: Any comments or any questions? Seeing none, thanks. [LB699]

NORMAN PFLANZ: Thank you. [LB699]

SENATOR ASHFORD: Sam? Or is it your turn? [LB699]

SAM FRANCO: It's my turn again. [LB699]

SENATOR ASHFORD: Okay. We're going to...the clergy is going to have to... [LB699]

SAM FRANCO: Well, here, please. I always defer to them. [LB699]

HOWARD DOTSON: Good afternoon. Thank you for the opportunity to speak with you, Chairman Ashford and committee members. My name is Howard Dotson, D-o-t-s-o-n, and I serve as a pastor at Westminster Presbyterian Church and field club which is on the northern end of the southeast precinct, and we've been doing a lot of community outreach in south Omaha, and Captain Gonzalez has taken great leadership in community policing. And just yesterday in the mayor's state of the city address, they lifted up community policing as a priority with Chief Hayes. And the unintended consequence of this bill would greatly hinder community policing. There's grave concerns in the Latino community today about being profiled and singled out by Omaha police. And we got assurances from Captain Gonzalez that although Omaha is not a sanctuary city, that local law enforcement is not working with ICE in tandem; that this can happen at the jail, in the prison. ICE is there. They can screen these folks to ask law enforcement. And when the word gets out on the street, bills like this, the disinformation that happens is incredible. And gang members...most gang members are

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actually Latino nationwide, and gang members capitalize on this information to say if you go to the police, you're going to get deported. And what happens is you get an underclass of our community that are undocumented, that are very vulnerable and they're being preyed upon by criminals. When I served in L.A., in the Rampart division, this was a huge issue and L.A. is even a sanctuary city, yet they still had this problem. And I know it was a hot-button issue in the last mayoral election about whether Omaha was going to become a sanctuary city. But if you were to implement this at the state level, you would make it nearly impossible for any local law enforcement agency that's considering whether to become a sanctuary city, and I think it's important at a...for the local law enforcement chief to be able to make a decision and for a local city council to make a decision of how their law enforcement officers are going to work with ICE.  
[LB699]

SENATOR ASHFORD: Any questions of Howard? Thank you, Howard. [LB699]

HOWARD DOTSON: Thank you. [LB699]

SENATOR ASHFORD: Sam? [LB699]

SAM FRANCO: May I approach? [LB699]

SENATOR ASHFORD: Yes. [LB699]

SAM FRANCO: (Exhibit 10) I'm going to make it real short but I want to offer up my testimony. I might also tell you that I also remember the blizzard of 1949. Some of us are old enough to remember events like that. And I thought maybe what we might do is to inject a little levity in some of the absurdity that takes place on occasion. Senator Ashford and members of the Judiciary Committee, my name is Severiano Franco. For those of you that don't speak English, my name is Sam. I am the interim executive director of the Mexican-American Commission and I thank you for this opportunity to appear in opposition to LB699. LB699 is another in a continuation of attempts to assign immigration responsibility to law enforcement officials in the state of Nebraska. Immigration is the sole responsibility of the federal government, and regardless of how we choose to present it, in the end it is still the federal government's responsibility. Now why would we choose to forward arrest information to the federal agencies who are responsible for the administration of immigration policies? There is no way that the arresting officer can accurately verify that such a person is undocumented. The deputy chief back here made that comment. Most people do not carry on their person documents other than their driver's license. Why should we expect anybody to carry more identification than this? Are we imposing an additional requirement for individuals to prove identity? We need to keep in mind that an arrest is just that--an arrest--and does not of itself imply that a conviction is forthcoming. Are we not proposing to put into a law a requirement that could lead to a de facto racial profiling? What are the

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exigencies for this requirement? I submit that none exists and therefore I ask you to reject LB699. [LB699]

SENATOR ASHFORD: Any questions of Sam? [LB699]

SAM FRANCO: Thank you very much. I may have another one in a little bit. [LB699]

SENATOR ASHFORD: All right. Any other opponents? Neutral testifiers? Senator McCoy. [LB699]

SENATOR McCOY: Thank you, Chairman. A couple of clarifications if I may. We already have a number of law enforcement agencies across our state that already operate under this policy. Douglas County sheriffs would be one. This piece of legislation is in no way intended to, as some opponents have said, interject federal immigration enforcement into our local law enforcement. The action of what is done is still in their hands. This piece of legislation is very clearly intended to make sure it's not a confusing patchwork across the state of which law enforcement already does...and the agency already does this, and which one does not. A couple other clarifications would need to be made. Senator Council, you mentioned a case, a recent case in Omaha. It's my understanding that that gentleman had two different driver's licenses. Both were issued before 2001 and at least one of those had been suspended in 2003. It also is important to note that currently in the case of if someone loses a driver's license, has to go get it replaced, you're required to have two forms of identification to get a new driver's license. So, clearly, we're not asking...I'm not asking anyone to carry any additional identification with them on their person. That's not the intention of this whatsoever. And, again, this piece of legislation is very clearly intended to not cause any additional racial profiling if there is any, and I don't believe that there is. I would hope not anyway. And with that I would conclude. [LB699]

SENATOR ASHFORD: Any questions? Yes, Senator Council. [LB699]

SENATOR COUNCIL: Just a question, Senator McCoy. How would you expect or believe that a law enforcement official, let's just say a patrol officer, would conclude that a person's citizenship is unknown or that their driver's license is fraudulent? [LB699]

SENATOR McCOY: Well, clearly, unknown may be in the case of this most recent case I just detailed to you if the driver's license that a person had...in this case it was prior to 2001 and had expired, then clearly that wouldn't be valid identification. And I would suspect, although I don't know that I've personally ever seen one, I would suspect that it is possible to create a fraudulent form of ID interposing a picture on another form of driver's license identification card in some way. I'm sure there are many other creative forms of ID that perhaps I can't think of at the moment. [LB699]

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SENATOR COUNCIL: And that kind of gets to the point. You know, the question is: believes their documentation is fraudulent. And with the exception of...well, quite frankly, there are a lot of people, a lot of citizens who drive around on an expired driver's license, believe me. So if that's the standard, then anyone with an expired driver's license would give rise to information being sent in to the ICE organization. I mean, if we apply that standard, if your driver's license is expired, that raises some presumption that your citizenship is in question. I mean, that's the issue that is problematic to me. You know, what is the standard? What are the factors? I don't know whether...some folks are really pretty good at creating false driver's licenses, and I would think that in many cases, if the barcode is not there or something, law enforcement would know that that's a fraudulent piece of identification. But absent something as blatant as that, how would a law enforcement officer suspect someone's citizenship is in question if they don't look at their last name, if they don't look at their race, and if they don't refer to their accent? [LB699]

SENATOR McCOY: Well, Senator Council, I would think that you pretty clearly outline what the intent would be. Clearly, if you look at a driver's license, a Nebraska driver's license has a driver's license number and it has a barcode. It's pretty apparent if that wasn't in place that that would--and it said it was a Nebraska ID--that that could be a potential that that would be a fraudulent driver's license. And I would stand ready if the committee so wished, if we need to make a clarification that we're not talking about a driver's license that expired last week being an issue that needs to be clarified to make sure that we're not unintentionally pulling that in and creating a problem there, I would be happy to address that. [LB699]

SENATOR ASHFORD: Yeah, let me just...any other questions? Senator McGill? No. The...I think you're sort of sitting in the position that this committee has been in for four years now trying to figure out what the federal law is, to start with, which is never clear, and then trying to figure out a way to enforce the law. And we've been...dealt with that issue a lot in this committee and it is a challenge of the utmost degree, because, for example on this issue, law enforcement. And I think Dave makes a great point, is he and his team, really there is no flow of information readily available between the Omaha Police division, or maybe the county sheriff does different things, but there's no real flow of information that's effective between the Omaha Police division and ICE. And that sort of situation exists throughout the system. I mean, we...the federal government have certain rules and regulations on immigration but they don't provide us or the states with any real way to...they don't enforce it so there isn't...and then therefore the states are sort of left with some sort of way to do it. We've developed some policies on--we're going to hear more about it--on unemployment. But it's tough and I don't...I think you're sitting where we've been sitting for four years: What do we do? And I think if the system were working in this country as it does in other countries where the federal government would work with local law enforcement, would provide information, would provide guidelines, for example, on how to address issues of undocumented persons in their

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community that are arrested and provide logistical support and other support to help them do that, then I think...then that's the way to do that. I'm not faulting your intent here at all, Senator McCoy. I just think this committee has been very frustrated by the lack of federal involvement, federal anything regarding immigration. And as the opponents to your bill suggest, and it's what I found when I went across the state with Stacey, and we went out there, and this sort of up in the air enforcement by the federal government leaves people just in this nowhere land, this kind of Alice in Wonderland kind of existence where they're not illegal...they haven't committed a criminal...these people who are here on an undocumented status haven't violated a criminal statute but they don't have the status to work or other things. And what it creates is, you know, just an untenable situation, and an untenable situation for the states, so...to deal with. So I certainly don't...I mean I think you're struggling with the same issues we've been struggling with and I don't know the answer. But anyway, thanks very much for your comments and your bill. Okay. [LB699]

SENATOR McCOY: Thank you, Chairman. [LB699]

SENATOR ASHFORD: (Also see Exhibits 16, 17, 18, and 19) That concludes the hearing on LB699. Senator Lathrop, LB996. [LB699 LB996]

SENATOR LATHROP: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent District 12 and I'm here today to introduce LB996. Last year we passed LB403, and that contained, after a lot of work by our Chair and the Judiciary Committee, it was an attempt to address, in a comprehensive way, immigration issues. One of the solutions that the bill and the central tenets of the bill was a requirement for E-Verify. And when that bill passed, E-Verify could only apply to new employees because the federal law said it could only apply to new employees. Since we passed LB403, the federal government says we're taking that new-employee-only piece out of the equation and so we are free to now require that all employees be E-Verified who are on a government job or employed by the government. Why is it important? What's happened out in the--and this has come to me through people in the trades--what's happened is the E-Verify is great. It stops...it requires that we E-Verify people that are new to the job. But if somebody has been employed by Joe's Construction Company for three years, nobody has to E-Verify them and they can come on the job and work. And it seems, in fairness, that it would be our intent to, with the E-Verify requirements in LB403, that we make sure the people that are employed by the government or working on government jobs are here in a legal status. And this would just expand it to all employees and not leave it simply just those that are new, which was all we could do when we enacted E-Verify in LB403. So with that, I may have to tweak it just a little bit with an amendment I was told on the way in here, but we'll get that to the committee. [LB996]

SENATOR ASHFORD: Thank you. Any questions of Steve? Yes, Senator Council.

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[LB996]

SENATOR COUNCIL: Thank you, Chairman Ashford. Senator Lathrop, correct me if I'm wrong on how E-Verify works. It's my understanding that--and this is based upon my recollection of discussion that revolved around LB403 last year--E-Verify is a system that's employed to verify that someone who says that they're here in a legal status is here in a legal status. Is that correct? [LB996]

SENATOR LATHROP: First of all, it's...to answer your question, it's an Internet-based program operated by, in conjunction with, or collaboratively by Homeland Security and the Social Security Administration. What it does is it matches up a person so if they come in and say my name is Steve Lathrop, this is my Social Security number, they check those and they verify that the Social Security number I've given is consistent with my name, at least as far as the federal government is concerned. And that is a measure for determining whether the person is lawfully here. Are there ways around it or ways to defraud the system? I suppose you can get somebody else's name and Social Security number and pass E-Verify. But you'd have to work under that name and Social Security number. But, generally speaking, if you don't have a Social Security number because you're not here lawfully, then you won't have a number to provide to the employer and they won't be able to match your name up to a Social Security number, so therein is the safeguard. [LB996]

SENATOR COUNCIL: Okay, so...but the point is, is what E-Verify will verify is that person A matches Social Security number A, but it doesn't necessarily establish that person A is a lawful resident of the United States. [LB996]

SENATOR LATHROP: If they're using their... [LB996]

SENATOR COUNCIL: It requires more than just the basic Social Security number information. [LB996]

SENATOR LATHROP: I think it is as simple as providing a name and a Social Security number, which is on the I-9 form. The employer takes it and sits down at the computer, types in the two bits of information, and the federal government tells us if it's a match. [LB996]

SENATOR COUNCIL: Okay, and that's the other question. Correct me if I'm wrong again: Every employee is supposed to have an I-9 on file. [LB996]

SENATOR LATHROP: I believe that's true. [LB996]

SENATOR COUNCIL: So whether Joe Blow has worked for a contractor A for five years, there is supposed to be an I-9 that is submitted with that individual to the Social

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Security Administration or whoever retains those. [LB996]

SENATOR LATHROP: I don't know what happens. If you start somewhere and you fill out an I-9, I don't know what they do with that. Okay? If you were working for the government or working on a government job, they would be required to take the information off the I-9 and make sure that the name matches the Social Security number. [LB996]

SENATOR MCGILL: Thank you, Senator Lathrop. Sorry, fell asleep on that for a moment. Do we have any proponents here on LB996? Any opponents? Come on up. You're the next contestant. (Laughter) [LB996]

NORMAN PFLANZ: (Exhibits 11, 12, 13, and 14) Members of the committee, my name is Norman Pflanz, N-o-r-m-a-n P-f-l-a-n-z, and I'm with, as I said before, Nebraska Appleseed Center for Law in the Public Interest, and we're here to testify in opposition to LB996. And just as a preliminary matter, we reached out to Senator Lathrop's office regarding our opposition. We were doing some late legal research on some of the issues involved with this bill and we shared it with Senator Lathrop, so our apologies for getting this information to him at a later date. Our concern centers around the memorandum of understanding that all employers have to sign with the Department of Homeland Security and with the Social Security Administration in order to participate in the E-Verify program. This memorandum of understanding I've included in the materials and I draw your attention specifically to Article II, Section C, paragraph 8 of the MOU that provides, "The Employer agrees not to use Basic Pilot," which is another name for E-Verify, "procedures for reverification, or for employees hired before the date this MOU is in effect." So in other words, you cannot run current employees through the E-Verify system under this current MOU. So we're concerned that under this bill Nebraska employers will be placed in sort of an impossible position where they would have to run, under Nebraska law, run current employees through the system but that would then violate the memorandum of understanding that allows them to use the system in the first place. So that is a concern of ours regarding this. Additional concerns are that expanding E-Verify is a bad idea because the system is riddled with defects. In our testimony we reference a report, a 2007 report to the Department of Homeland Security that found that the database used for verification is not sufficiently up to date to meet the requirements of the Illegal Immigration Reform and the Immigrant Responsibility Act of 1996, a requirement for accurate verification. There's been many other studies conducted, as well, that show that the system is riddled with errors. Another concern of ours, it could subject the state to substantial litigation costs. Right now, the federal circuit courts are...there have been conflicting opinions on this. One case from the Ninth Circuit regarding Arizona law requiring E-Verify will be heard by the Supreme Court, I believe later on this month or next month. So a decision should be forthcoming. But even with the two decisions, one involving the Arizona law and one involving the Oklahoma law, neither of those laws required current employees to be run through

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E-Verify. So we would be the first state to require all current employees to be run through the system. A final concern, if I could sum up real quick... [LB996]

SENATOR MCGILL: Real quick, yeah. Real quick. [LB996]

NORMAN PFLANZ: Thank you. We're concerned that it could overload the Social Security Administration. E-Verify is based on the Social Security Administration database but it was never intended to be used in such a way. About 1 percent of the employers are enrolled in E-Verify right now. If E-Verify was expanded even more it could potentially damage the Social Security database. And especially in a state such as ours that has an older population, we would be very concerned about the ramifications of that. And I've also included a New York Times editorial that sort of goes into that a little bit more. Thank you for the extra time. I'd be happy to answer any questions. [LB996]

SENATOR MCGILL: Yeah. Thank you. Questions? Senator Lautenbaugh. [LB996]

SENATOR LAUTENBAUGH: Thank you, Madam Vice-Vice Chair. Have you talked to anybody at Social Security Administration about this concern about overload? [LB996]

NORMAN PFLANZ: We have. I believe it was earlier last summer we spoke with individuals at Social Security Administration. And they did share some concerns with us and I'd be more than happy to follow up with you regarding those particular concerns that the Social Security Administration does have regarding this. [LB996]

SENATOR LAUTENBAUGH: But were there concerns that the system could overload because of this bill? [LB996]

NORMAN PFLANZ: Yes. Right now...right now, that we only have 1 percent right now, the employers are using the database. There is a large potential that that could actually occur. [LB996]

SENATOR LAUTENBAUGH: Now the bill that we passed last year, did Appleseed come in, in favor of that? [LB996]

NORMAN PFLANZ: We were opposed to that bill. [LB996]

SENATOR LAUTENBAUGH: Why was that? [LB996]

NORMAN PFLANZ: We felt that these type of...basically because E-Verify is, as I said today, riddled with errors. You have...if you are a foreign-born person who comes to work in this country, you're 30 times more likely to be registered as not eligible for work. If you have a foreign sounding name, if you use your middle initial at one point or just

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use your middle name at another point, there is a great potential for abuse of this. We've also seen employers use this against employees, as well, that maybe a false positive comes in and they can use that against employees as well. [LB996]

SENATOR LAUTENBAUGH: In what way? [LB996]

NORMAN PFLANZ: That they will...that if the employee comes before the employer with, let's say, like an injury or a complaint, the employer would then say, well, you have a...you've tested, you know, falsely on this, and they would more likely not...the employee, even though he is eligible to work, that could be used against them in that way. The employ... [LB996]

SENATOR LAUTENBAUGH: And that's a potentiality that arose because of E-Verify, in your mind? [LB996]

NORMAN PFLANZ: It is one of the problems, yes. [LB996]

SENATOR LAUTENBAUGH: Have we considered any immigration legislation that Appleseed has ever testified in favor of? [LB996]

NORMAN PFLANZ: Absolutely. A resolution I believe last year that would call on the federal government to pass comprehensive immigration reform. Also I just testified a couple weeks ago regarding in-state tuition and we were very proud that Nebraska is one of only ten states to provide in-state tuition to our Nebraska students, and so we strongly supported that. [LB996]

SENATOR LAUTENBAUGH: So you weren't testifying in favor of Senator Janssen's bill; you were testifying in favor of some other bill. [LB996]

NORMAN PFLANZ: We were testifying in opposition to Senator Janssen's bill to repeal in-state tuition because that is specifically provided for under federal law. [LB996]

SENATOR LAUTENBAUGH: Have you noticed any sort of increase in discrimination or complaints of such since we implemented the limited amount of E-Verify we have? [LB996]

NORMAN PFLANZ: We have. We've been speaking with service providers and they have shared with us the issues that they have with that. And I'd be more than happy to follow up with your office regarding those issues as well. [LB996]

SENATOR LAUTENBAUGH: How are they being pursued, if you know? [LB996]

NORMAN PFLANZ: Say it again, please. [LB996]

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SENATOR LAUTENBAUGH: How are those complaints of discrimination being pursued currently, if you know? [LB996]

NORMAN PFLANZ: I do not know at this time but I will follow up with you on that. [LB996]

SENATOR LAUTENBAUGH: Because I note here you have a concern about increased litigation. So I'm assuming there will be another route to redress, is that the case? [LB996]

NORMAN PFLANZ: I believe some organizations are looking to challenge the legality of LB403. [LB996]

SENATOR LAUTENBAUGH: Would you concede that it would be fundamentally fair if we apply E-Verify to new employees, that we should probably apply it to all employees? [LB996]

NORMAN PFLANZ: If you did so, it would...you would be in violation of the memorandum of understanding with DHS and the Social Security Administration, which prohibits E-Verify to be used on new employees...or excuse me, on current employees. [LB996]

SENATOR LAUTENBAUGH: Maybe you didn't understand my question. Is there some sort of a fairness argument that suggests that we should apply this to new employees but not existing employees? [LB996]

NORMAN PFLANZ: That argument could be made that it could apply to both. But, right now, we have the memorandum of understanding in place and Nebraska is...Nebraska employers would be required to sign the memorandum of understanding in order to participate in E-Verify. [LB996]

SENATOR LAUTENBAUGH: And it's your position that if we pass this law requiring employers to do something and they do that, that they would somehow be in jeopardy under the memorandum of understanding if they could still reply: Well, we're just complying with state law. [LB996]

NORMAN PFLANZ: Federal law would preempt in this case because they would not be able to sign up for E-Verify under the memorandum of understanding if they were running current employees through the system. [LB996]

SENATOR LAUTENBAUGH: And you're confident that would be the case despite recent changes in the federal law of what we can do with E-Verify. [LB996]

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NORMAN PFLANZ: That is correct. Senator Lathrop was correct that the federal law has changed, but as it applies to the memorandum of understanding, that has not changed. The memorandum of understanding is still in effect. [LB996]

SENATOR LAUTENBAUGH: And there's no way to alter that to comply with existing law? [LB996]

NORMAN PFLANZ: You could alter...the federal government would have to alter that. The Department of Homeland Security and the Social Security Administration would have to alter that memorandum of understanding. [LB996]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB996]

SENATOR ASHFORD: Any further questions? Seeing none, thanks. [LB996]

NORMAN PFLANZ: Thank you. [LB996]

SENATOR ASHFORD: Sam. Anyone else? [LB996]

SAM FRANCO: (Exhibit 15) Senator Ashford, members of the Judiciary Committee, again my name is...it hasn't changed: Severiano Franco. I am the interim executive director of the Mexican-American Commission, and again you can still call me Sam. I want to thank you for the opportunity to appear in opposition to LB996. LB996 imposes a requirement that public contractors use a federal immigration verification system to determine documented work status of all employees. Current legislation requires only new hires be verified while LB996 seeks to amend existing law and require all employees be verified. Employers across Nebraska and the U.S. are already being subjected to many unnecessary administrative requirements, and the addition of this change will only add to the burden. The additional costs imposed by this measure and the potential disruption of their operations will have a negative impact on their ability to complete projects on time, thereby severely affecting the employer's bottom line. The E-Verify system is currently being utilized by less than 2 percent of employers nationwide. Testimony presented at congressional hearings clearly has demonstrated that it is still not error free, generating as much as a 10 percent error rate. The small employers can ill afford the time loss that would be created by such reporting errors. Each time small employers are asked to resubmit data, it requires additional time, expense, and worst of all, it could deny employees an opportunity to be gainfully employed. How much disruption in employer operations are we prepared to impose? Are independent contractors bound by this same requirement? I thank you and I ask you to reject LB996. [LB996]

SENATOR ASHFORD: Any questions of Sam? The only thing, Sam, I would say is that

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I understand your point about regulation of employers. The one thing that has happened under the Obama administration is they have embraced E-Verify and at the same time they have...the administration has decreased the number of raids on employers, which is consistent with at least my personal belief on how we should handle this issue. And that is that E-Verify is a tool that I think is appropriate. The raids are counterproductive or were counterproductive, in my view, and there can be differing views, but were counterproductive and demoralizing and didn't help much even though there were deportations that resulted from those. But that E-Verify is a decent way of handling the problem. Employers are required to verify employment status of employees. And it protects the workplace it seems to me from workplace abuse. I'm not...Sam, I understand how deeply you feel about this and I'm not asking you to come...I'm just saying how I think about it. I mean, it seems like the other side of this is that if you don't verify employment, that there's a real chance that you're going to have substandard working conditions, substandard wages, you know, and that I think the current administration on this issue seems to be moving in a more humane way to deal with the issue, but anyway. [LB996]

SAM FRANCO: My only comment to that, Senator, and I've heard you talk about this and you spoke eloquently about this, as have other people. And the problem isn't one that lies here with this committee or with the state of Nebraska... [LB996]

SENATOR ASHFORD: Oh, I understand you're not...you're talking about the federal... [LB996]

SAM FRANCO: No, but it's a national issue and until such time as we quit playing politics with the thing and begin to address it from a need to be done, it's a humanitarian issue that needs to be addressed. [LB996]

SENATOR ASHFORD: I understand. We found...when we...and I'll stop here, but when we were...and you know, as we went around the state, what we found was such a deep sense of discrimination because Latinos especially, Latino people, citizens were being discriminated against because they were painted with a broad brush, and that's of illegality or undocumented status. And that struck me very deeply. So, I mean, I know we draw...maybe draw different conclusions on how to address it, but I...anyway. [LB996]

SAM FRANCO: Well, as you speak about the discrimination, come up to the office and spend one day with me and you'll find out how deep the fraud goes and it goes on and on and on. [LB996]

SENATOR ASHFORD: And I respect the work you're doing, Sam, but I'm just...anyway, thank you. [LB996]

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SAM FRANCO: Thank you, sir. [LB996]

SENATOR ASHFORD: The next opponent. Neutral? Senator Lathrop. [LB996]

SENATOR LATHROP: Just very briefly. Last year when we did LB403, we saw this as a solution. There were a lot of different ways we could have addressed the issue after a lot of thoughtful consideration, E-Verify is the solution that we came to and there was a limitation on our ability to apply it to every employer or every employee instead of just new employees. I think that problem has been solved by the federal government. I'll look into...we put a call into Nelson's office, Senator Nelson's office, to ask him about this memorandum that has to be entered into, whether that presents a limitation. And I'll report back to the committee before we try to move the bill. [LB996]

SENATOR ASHFORD: Okay. Thank you. [LB996]

SENATOR LATHROP: Okay. Thanks. [LB996]

SENATOR ASHFORD: (Also see Exhibits 19 and 20.) And that concludes the hearing. [LB996]